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In the Supreme Court of the United States

STATE OF ILLINOIS, PETITIONER

v.

ROBERT S. LIDSTER

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether an informational checkpoint, at which police officers briefly stop all oncoming motorists to distribute flyers that seek information concerning a hit-and-run accident that occurred at the location of the checkpoint, violates the Fourth Amendment as construed in *City of Indianapolis* v. *Edmond*, 531 U.S. 32 (2002).

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INTEREST OF THE UNITED STATES

This case involves the validity under the Fourth Amendment of a vehicle checkpoint whose purpose is to allow law enforcement officers to provide information to motorists about a crime and to seek the public's assistance in solving that crime. The Federal Bureau of Investigation (generally in conjunction with local law enforcement agencies), the United States Park Police of the Department of the Interior's National Park Service, and the Department of Agriculture's Forest Service conduct similar informational checkpoints to seek information about crimes committed within their respective jurisdictions, to alert motorists to important public safety and regulatory information, and to help locate missing persons. Because such checkpoints are an important and effective means of seeking information

and protecting the public, the federal government has a substantial interest in this case.

STATEMENT

1. On August 30, 1997, the police department in Lombard, Illinois, established an informational checkpoint at the scene of a fatal hit-and-run accident. The checkpoint was established in the same location as the hit-and-run accident, on the same day and at approximately the same time one week later, with the purpose of locating witnesses to the hit-and-run who could "provide information about the offender or his vehicle." Pet. App. 23. Between six and twelve marked police vehicles participated in the checkpoint with their lights activated. *Id.* at 2. Traffic slowed at the checkpoint so that all of the cars individually approached a police detective, who was wearing an orange reflective vest bearing the word "Police." As each car approached, the officer handed a flyer to the driver requesting information about the accident. *Ibid.* The flyer "ALERT[ed]" motorists that there had been a "FATAL HIT & RUN ACCIDENT," and asked for "ASSISTANCE IN IDENTIFYING THE VEHICLE AND DRIVER INVOLVED IN THIS ACCIDENT WHICH KILLED A 70 YEAR OLD BICYCLIST." J.A. 14. The flyer identified the time and place of the accident, and described the suspect vehicle. J.A. 14-15. The officer distributing the flyers did not ask for the driver's name, license, or insurance information, nor did he ticket for plain-view infractions like seatbelt violations. Each stop lasted approximately 10 to 15 seconds. J.A. 31.

As respondent approached the officer at the checkpoint, he "narrowly missed hitting [the] officer" with his minivan. Pet. App. 6. After jumping out of the way, the officer approached the vehicle to ask why the

driver had almost hit him. *Id.* at 24. When respondent answered, the officer smelled alcohol on his breath and noticed that his speech was slurred. *Ibid.* The officer then directed respondent to a side street, where another officer performed a number of sobriety tests. *Ibid.* After those tests, the police arrested respondent for driving under the influence. *Ibid.*

2. Respondent moved to quash his arrest and suppress evidence on the ground that the checkpoint was unconstitutional. The trial court denied the motion. It found that the decision to establish the checkpoint was made by a supervisory official, the police operated the checkpoint in a regularized manner, and the detention was for a minimal period of time. J.A. 36-37. Respondent subsequently was convicted at a bench trial of driving under the influence of alcohol. Pet. App. 3.

The Illinois appellate court reversed. Pet. App. 23-28. The appellate court concluded that this Court's intervening decision in *City of Indianapolis* v. *Edmond*, 531 U.S. 32 (2000), precluded the operation of the informational checkpoint in this case because "the express purpose of the roadblock was to search for evidence of a crime," Pet. App. 26, and "a criminal investigation can never be the basis for a roadblock," *id.* at 27.

3. A divided Illinois Supreme Court affirmed. Pet. App. 1-22. The supreme court concluded that, under *Edmond*, the Fourth Amendment prohibits any checkpoint the primary purpose of which is "general crime control." *Id.* at 7. The court found no difference, for Fourth Amendment purposes, between "a police investigation tool such as canvassing" for witnesses and a checkpoint aimed at uncovering crimes committed by the motorists themselves. *Id.* at 8.

Three Justices dissented. Pet. App. 12-22. Those Justices interpreted *Edmond* to prohibit checkpoints that are "designed to detect through 'interrogation and inspection * * * that any given motorist has committed some crime,'" *id.* at 16 (quoting *Edmond*, 531 U.S. at 44). The informational checkpoint here, in the dissent's view, was not subject to *Edmond* because it was not aimed at "discovering that the subjects of the seizure have committed some crime." Pet. App. 14. The dissenting Justices further reasoned that "canvassing for information about a deadly hit-and-run crime that happened on the roadway would serve the purpose of highway safety in a similar fashion to checking licenses to ensure that only qualified drivers are operating motor vehicles." *Id.* at 16.

SUMMARY OF ARGUMENT

Informational checkpoints are consistent with the Fourth Amendment because the important public safety interests effectively served by such checkpoints outweigh the minimal intrusion imposed on motorists using the public highways. This Court has long recognized that the Fourth Amendment does not prevent police officers from approaching individuals in public places and seeking their voluntary cooperation in an investigation. Informational checkpoints are an important means by which, in a highly mobile society, law enforcement officers can similarly advise motorists that a crime has been committed and seek information and their voluntary assistance in solving it. Informational checkpoints are commonly used to alert the motoring public to the disappearance of a child or to identify witnesses to crimes committed near roadways. Providing important information to motorists about crimes that endanger public safety and affording those

individuals the opportunity voluntarily to assist the police in the investigation of those crimes promotes responsible citizenship and is vital for law enforcement to operate effectively in a free society.

When, as in the case at hand, informational checkpoints are designed to canvas possible witnesses to vehicular crimes committed on the public roadways, the checkpoints also directly advance the public interest in roadway safety, in the same manner as the sobriety checkpoints previously upheld by this Court against Fourth Amendment challenge. Informational checkpoints are often the only practicable means of locating witnesses to such crimes in order to assess liability accurately and ultimately to remove dangerous drivers from the roadway.

Those important public interests outweigh the negligible intrusion informational checkpoints impose on motorists. As this Court has recognized, travelers on the public roadways are already subject to a variety of limitations on their freedom of movement and an ongoing duty to submit to stops or inspections for roadway safety purposes. Against that backdrop, the 10 to 15 second stop that occurred here, during which a uniformed officer provided all drivers with a flyer seeking information about a crime, imposes no appreciable intrusion on motorists' liberty. The regularized manner in which the checkpoint was operated and the informational nature of the interchange with motorists, moreover, eliminated any subjective intrusion on the motorists.

The Illinois Supreme Court did not deny the important public interests served by the informational checkpoint, nor did it disagree with the minimally intrusive character of the brief stop. The court instead concluded that the fact that the informational check-

point advanced what it considered to be general crime control purposes made it per se invalid under the Fourth Amendment. In so holding, the court found the informational checkpoint functionally indistinguishable from the narcotics-detection checkpoint invalidated by this Court in *City of Indianapolis* v. *Edmond*, 531 U.S. 32 (2000).

Edmond, however, proscribed checkpoints designed both to uncover hitherto unknown criminal activity and to gather evidence implicating the seized motorists in those crimes. The narcotics checkpoint in *Edmond* thus implicated the Fourth Amendment's protection against seizures and searches designed to incriminate the target. The informational checkpoint conducted here bears little relationship to such general crime-detection checkpoints. The checkpoint sought only to educate the traveling public about the commission of a specific, known crime that threatened their safety and to seek their voluntary assistance in removing a dangerous driver from the road. There is a significant constitutional and practical difference between law-enforcement conduct that seeks information through voluntary cooperation, and police conduct that seeks incrimination through individualized inspection and targeted questioning.

ARGUMENT

INFORMATIONAL CHECKPOINTS THAT ADVANCE IMPORTANT PUBLIC SAFETY INTERESTS AND THAT INTRUDE MINIMALLY ON MOTORISTS' LIBERTY DO NOT VIOLATE THE FOURTH AMENDMENT

The "essential purpose" of the Fourth Amendment is "to impose a standard of 'reasonableness' upon the exercise of discretion by government officials." *Delaware* v. *Prouse*, 440 U.S. 648, 653-654 (1979) (footnote

omitted). The Fourth Amendment does not impose an "irreducible requirement" of individualized suspicion. *United States* v. *Martinez-Fuerte*, 428 U.S. 543, 561 (1976). Instead, the reasonableness of seizures that are less intrusive than a traditional arrest turns on "a balance between the public interest" served by the practice and "the individual's right to personal security free from arbitrary interference by law officers." *Brown* v. *Texas*, 443 U.S. 47, 50 (1979) (quoting *Pennsylvania* v. *Mimms*, 434 U.S. 106, 109 (1977) (per curiam), and *United States* v. *Brignoni-Ponce*, 422 U.S. 873, 878 (1975)).

What is reasonable "depends on the context," *New Jersey* v. *T.L.O.*, 469 U.S. 325, 337 (1985), and "[t]he fact that automobiles occupy a special category in Fourth Amendment case law is by now beyond doubt," *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307, 315 n.10 (1978). See also *South Dakota* v. *Opperman*, 428 U.S. 364, 367 (1976) ("This Court has traditionally drawn a distinction between automobiles and homes or offices in relation to the Fourth Amendment."); *Cady* v. *Dombrowski*, 413 U.S. 433, 439 (1973) ("there is a constitutional difference between houses and cars") (quoting *Chambers* v. *Maroney*, 399 U.S. 42, 52 (1970)). For more than a quarter century, the Court has stressed that "one's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence." *Martinez-Fuerte*, 428 U.S. at 561. That distinction arises, in part, because of the "obviously public nature of automobile travel," under which cars routinely "travel[] public thoroughfares where both [their] occupants and [their] contents are in plain view." *Opperman*, 428 U.S. at 368; see also *Cardwell* v. *Lewis*, 417 U.S. 583, 590 (1974).

Against that background and this Court's cases addressing vehicle checkpoints, the informational checkpoint conducted in this case is constitutional. The checkpoint advances important governmental interests that are distinct from the general interest in crime control. Balancing those objectives against the minimal intrusiveness of the stop, the checkpoint complies with the standard of reasonableness that this Court has applied in upholding checkpoints in other contexts.

A. The Fourth Amendment Permits Vehicle Checkpoints Where The Government Interests At Stake Justify The Measure, There Are Explicit Constraints On Police Discretion, And The Intrusion On Motorists Is Limited

This Court has addressed the constitutionality of vehicle checkpoints under the Fourth Amendment on three occasions. In *United States* v. *Martinez-Fuerte*, the Court upheld the Border Patrol's use of permanent, fixed checkpoints on roads leading to the interior of the country. The Court found the "law enforcement needs served by the checkpoints"—controlling the flow of illegal aliens and smuggling—to be "substantial[]," 428 U.S. at 556-557 & n.12, while "the consequent intrusion on Fourth Amendment interests is quite limited," *id.* at 557. The checkpoint's interference with legitimate traffic was "minimal," and the exercise of discretion by officers was limited by the "regularized manner in which established checkpoints are operated." *Id.* at 559.

In *Michigan Department of State Police* v. *Sitz*, 496 U.S. 444 (1990), the Court upheld sobriety checkpoints at which cars were briefly stopped and drivers examined for signs of intoxication. The Court noted that the "magnitude" of the State's interest in combating the problem of drunk driving was undisputed, *id.* at 451. On the other side of the ledger, the Court found, the intrusion on motorists stopped at sobriety checkpoints was "minimal." *Id.* at 452. While the Court made clear that no searching examination of the sobriety checkpoint's "effectiveness" was required in order to sustain them, *id.* at 454, the Court concluded that the ability of the checkpoints to advance the States' interest was sufficient to strike the balance "in favor of the state program." *Id.* at 455.

In *City of Indianapolis* v. *Edmond*, the Court invalidated a narcotics-detection checkpoint program the "primary purpose" of which was "to uncover evidence of ordinary criminal wrongdoing," 531 U.S. at 42. While recognizing that checkpoints could be legitimately established for law enforcement purposes, the crucial factor for the Court was that "the primary purpose of the Indianapolis checkpoint is to advance the *general* interest in crime control." *Id.* at 44 n.1 (emphasis added). The Court reasoned that the intrusion on motorists' liberty occasioned by the suspicionless stops was not justified by the "generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." *Id.* at 44.

In all three cases, the Court evaluated the constitutionality of the checkpoints by applying the *Brown* v. *Texas* balancing test, under which the Court weighs "the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty," 443 U.S. at 51. See *Edmond*, 531 U.S. at 47 ("The constitutionality of such checkpoint programs still depends on a balancing of the competing interests at stake and the effectiveness of the pro-

gram."); *Sitz*, 496 U.S. at 450 ("*Martinez-Fuerte*, *supra*, which utilized a balancing analysis in approving highway checkpoints for detecting illegal aliens, and *Brown* v. *Texas*, *supra*, are the relevant authorities here."); *Martinez-Fuerte*, 428 U.S. at 557-562. See also *Ferguson* v. *City of Charleston*, 532 U.S. 67, 83-84 n.21 (2001) (distinguishing analysis of cases involving "special needs" searches from analysis of "roadblock seizures," for which the Court has "applied a balancing test to determine Fourth Amendment reasonableness"). *Edmond* made clear that the pursuit of "general crime control ends," 531 U.S. at 43, is not a sufficiently grave public concern to support a program of suspicionless seizures, *id.* at 44. But *Edmond* did not preclude the use of checkpoints in all law-enforcement situations. 531 U.S. at 44 & n.1.

B. Informational Checkpoints Advance Substantial Governmental Interests Distinct From The General Interest In Crime Detection, And They Are Reasonable Under This Court's Balancing Test

Informational checkpoints are tailored to serve important public objectives. In this case, the checkpoint sought to provide the public with information about criminal activity in order to locate witnesses to a hit-and-run. Properly understood, such checkpoints serve purposes that are distinct from general crime control, *Edmond*, 531 U.S. at 43, and reviewed under the *Brown* v. *Texas* balancing test, the important public interests served by such checkpoints justify the minimal intrusion on motorists' liberty.

1. *Informational Checkpoints Effectively Promote Public Safety*

While there are a variety of informational checkpoints, such checkpoints can serve at least two important purposes relevant to this case. First, they can assist in the location of witnesses to a crime. Second, they can directly promote roadway safety.[1]

a. Effective Investigation of Crime. Informational checkpoints enable officers to locate witnesses who might otherwise be unaware of a crime or unaware that they have information necessary to its solution. The ability to question such witnesses is often critical to law enforcement. See *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 225 (1973) (discussing "the acknowledged need for police questioning as a tool for the effective enforcement of criminal laws"). Without such questioning, "those who were innocent might be falsely accused, those who were guilty might wholly escape prosecution, and many crimes would go unsolved" with the result that "the security of all would be diminished." *Ibid.* Accordingly, this Court has long recognized that "[l]aw

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[1] Informational checkpoints also can be used to inform the public or to seek information about situations that do not involve criminal conduct. The federal Forest Service—which is responsible for policing over 193 million acres of land, encompassing nearly 400,000 miles of road, with just 600 officers—informs us that it considers the use of strategically situated informational checkpoints critical to its efforts to locate missing hikers, to coordinate with motorists the most efficient and productive shared use of National Forest System lands during times of peak demand (such as the opening of hunting or fishing seasons), and to warn motorists of bear attacks, fire hazards, and sudden changes in road conditions. Those types of checkpoints clearly do not serve general crime control interests under *Edmond* and are unquestionably valid under the Fourth Amendment.

enforcement officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places," such as on public transportation, "and putting questions to them if they are willing to listen." *United States* v. *Drayton*, 536 U.S. 194, 200 (2002).

Not all crimes can be investigated by approaching individuals on the street. The United States has become "the most mobile society on earth."[2] Ninety-one percent of all Americans own a car,[3] and Americans travel roughly 2.8 trillion vehicle miles annually.[4] "Many people spend more hours each day traveling in cars than walking on the streets." *Prouse*, 440 U.S. at 662. As a consequence, informational checkpoints are often the only practicable means available for police to alert an entire category of often critical potential witnesses—passing motorists—to the fact that a crime has been committed and that activities they witnessed may be relevant. The need to notify drivers is especially acute in policing high-speed roadways or non-urban settings, where neighbors may be distant and pedestrian traffic minimal. Individuals driving by an incident may be the only witnesses to a crime, yet they may not realize that what they saw was significant unless and until approached by the police. See, *e.g.*, *Burns* v. *Commonwealth*, 541 S.E.2d 872 (Va.) (upholding against Fourth Amendment challenge an informational checkpoint conducted to locate witnesses to the rape and murder of a 73-year-old woman), cert. denied, 534 U.S. 1043 (2001).

For example, informational checkpoints are often used in missing children cases, including in the recent disappearance and recovery of Elizabeth Smart in Utah. See Pat Reavy, *et al.*, *Sister's Story: New Details Emerge*, Deseret News (June 19, 2002), <http://deseretnews.com/dn/print/1,1442,405012725,00.html>; see also *Phoenix Cops Look for Missing Girl*, Associated Press (Jan. 7, 1999) (informational checkpoint used where child disappeared from a roadside while awaiting ice cream truck); Brenda Kilby, *Roadblocks Used to Get Kidnapping Information*, Tulsa World (July 23, 1995), *available in* 1995 WL 5614662. Because nearly half of all nonfamily child abductions involve taking the child in a vehicle,[5] it is vital that police be able to communicate quickly and directly with motorist-witnesses and to seek the assistance of the motoring public in locating the abductor's vehicle in the crucial hours following an abduction or disappearance.[6]

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[2] *Department of Transp. and Related Agencies Appropriations for Fiscal Year 1998: Hearings Before the Subcomm. on Transp. and Related Agencies of the Senate Comm. on Appropriations*, 105th Cong., 1st Sess. 56-57 (1997) (Jane F. Garvey, Acting Administrator, Fed. Highway Admin.).

[3] Stephen Moore & Julian L. Simon, *The Greatest Century That Ever Was: 25 Miraculous Trends of the Past 100 Years* 22 (Cato Inst., Policy Analysis No. 364) (Dec. 15, 1999).

[4] National Highway Traffic Safety Admin., U.S. Dep't of Transp., *Traffic Safety Facts 2001: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System* at inside front cover (2002), <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSFAnn/TSF2001.pdf>; see also Bureau of Transp. Statistics, U.S. Dep't of Transp., *National Transp. Statistics* 53, Table 1-32 (2002), <http://www.bts.gov/publications/national_transportation_statistics/2002/pdf/entire.pdf>.

[5] Office of Justice Programs, Dep't of Justice, *Nonfamily Abducted Children: National Estimates and Characteristics* 9 & Table 5 (Oct. 2002).

[6] Those same considerations make informational checkpoints useful to help locate missing adults and lost Alzheimer patients.

Those considerations animated, in significant part, the recent passage of federal Amber Alert legislation, which provides federal funding for the States' adoption and implementation of "motorist information systems to notify motorists about abductions of children." See Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, § 303, 117 Stat. 662-663 (to be codified at 42 U.S.C. 5791b). Informational checkpoints, which permit analogous notifications on local and more rural roads, are considered an important adjunct to the Amber Alert program. See 148 Cong. Rec. S8438 (daily ed. Sept. 10, 2002) (Sen. Feinstein) ("[I]f you can identify a license plate, you may well save the life of a child.").

In short, informational checkpoints are a critical means by which police accomplish in a modern, highly mobile society law-enforcement purposes that have long been considered acceptable under the Fourth Amendment: approaching persons on highly regulated public roadways—a place "where [the police] ha[ve] a right to be," *California* v. *Ciraolo*, 476 U.S. 207, 213 (1986)—to canvas for witnesses and to seek the public's voluntary assistance in solving a crime.

b. Protection of roadway safety. Informational checkpoints used to investigate crimes committed on the public roadways and to remove dangerous and irresponsible drivers from the road also serve the additional purpose of directly promoting roadway safety, in the same manner as the sobriety checkpoints upheld by this Court in *Sitz*, *supra*. In *Sitz*, the Court sustained sobriety checkpoints against a Fourth Amendment challenge, in part, because they advanced the significant public interest in stemming the "slaughter on our highways" caused by drunken drivers. 496 U.S. at 451 (quoting *Breithaupt* v. *Abram*, 352 U.S. 432, 439 (1957)). That "close connection to roadway safety," *Edmond*, 531 U.S. at 43 (discussing *Sitz*), warranted the minimal intrusion on motorists occasioned by sobriety checkpoints.

The use of informational checkpoints to solve accidents caused by aggressive driving and hit-and-run accidents serves identical public safety goals by helping police get dangerous drivers off the roadway. Aggressive drivers pose the same "type of immediate, vehicle-bound threat to life and limb," *Edmond*, 531 U.S. at 43, as drunken drivers. In 1996, almost 42,000 people died and more than 3 million were injured in police-reported crashes. Those crashes cost the Nation $150.5 billion a year. Approximately one-third of those crashes and two-thirds of the resulting fatalities are attributed to behavior associated with aggressive driving.[7] "[A]ggressive driving may be a factor in more than 50 percent of auto crashes, based on the experience of the Washington Beltway." United States Dep't of Transp., *Analysis of the Capital Beltway Crash Problem* (Mar. 1996).

Hit-and-run drivers pose a similar threat to roadway safety. In 2001, hit-and-run accidents accounted for seven percent of all fatal crashes—on the order of 1000 deaths—in urban areas. National Highway Traffic Safety Admin., U.S. Dep't of Transp., *Traffic Safety Facts 2001: Rural/Urban Comparison* 2 (2002), <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF2001/2001rural.pdf>. There were 18,317 hit-and-run

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[7] *Road Rage: Causes and Dangers of Aggressive Driving: Hearing Before the Subcomm. on Surface Transp. of the House Comm. on Transp. and Infrastructure*, 105th Cong., 1st Sess. 104 (1997) (statement of Hon. Ricardo Martinez, M.D., Administrator, National Highway Traffic Safety Admin.).

injuries in 1992 in Los Angeles County alone. See Dianne Klein, *Sudden Death on the Streets*, Los Angeles Times, at A1 (May 1, 1994).

For federal law enforcement agencies, like the United States Park Police, informational checkpoints serve a key role in investigating and solving such crimes. That is because such incidents often occur in locations, like federal parkways, where motorists are the only potential witnesses. With respect to aggressive driving, moreover, commission of the underlying vehicular offenses can take place over miles of roadway. One of the more publicized aggressive driving incidents, which resulted in the deaths of three people in April 1996, spanned more than seven miles of the George Washington Memorial Parkway in Virginia, as two drivers battled each other for at least 15 minutes at speeds approaching 80 miles per hour.[8] Witnesses that see the resulting accidents, however, may not be able to say what led up to it, while drivers who witnessed the earlier speeding or weaving may be unaware that an accident ever occurred. See *Targeting Aggressive Drivers, Police Face Tough Road*, The Washington Post, at V01 (Feb. 20, 1997) ("But as police and prosecutors step up efforts to catch and convict aggressive drivers, they're finding it painstaking and difficult to conduct the investigations and build their cases. The main problem is tracking down witnesses who saw the aggressive behavior and who can tell a jury who started it.").

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[8] See *Research on the Problem of Violent Aggressive Driving: Hearings Before the House Comm. on Transp. and Infrastructure, Subcomm. on Surface Transp.*, 105th Cong., 1st Sess. 153 (1997) (testimony of David K. Willis, President and Chief Executive Officer, AAA Found. for Traffic Safety).

For similar reasons, "[h]it-and-run cases are among the hardest to solve, police say, because there is often little evidence left behind." Susan Carroll, *Hit-and-Run Deaths Often Go Unsolved*, The Arizona Republic (Feb. 25, 2003), <http://www.azcentral.com/specials/special21/articles/0225phxunsolved25.html>. Informational checkpoints directly address those "formidable law enforcement problems" on the public roadways, *Martinez-Fuerte*, 428 U.S. at 552, by alerting motorist-witnesses that an accident or crime occurred and that any information they have might be relevant, which in turn allows law enforcement to piece together a more comprehensive picture of the incident, more accurately evaluate liability issues, and more expeditiously remove dangerous drivers from the road. In short, for solving crime in a mobile society—especially when time is of the essence or the crime occurs on a high-speed roadway or in a non-urban setting—there is often an "absence of practical alternatives" to canvassing motorists through an informational checkpoint. *Brignoni-Ponce*, 422 U.S. at 881; see also *United States* v. *Ross*, 456 U.S. 798, 806 (1982) ("impracticability" of otherwise accomplishing law enforcement goals weighs in the Fourth Amendment balance); *Prouse*, 440 U.S. at 655.[9]

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[9] The Illinois Appellate Court's assumption that "more traditional law enforcement techniques would have been just as, if not more effective" (Pet. App. 28), misapprehends the difficulties involved in investigating roadway crimes like hit-and-run accidents. In any event, this Court has long refused to incorporate a "least restrictive means" test into the Fourth Amendment's requirement of reasonableness. See *Atwater* v. *City of Lago Vista*, 532 U.S. 318, 350-351 (2001); *Skinner* v. *Railway Labor Executives' Ass'n*, 489 U.S. 602, 629 n.9 (1989) ("It is obvious that '[t]he logic of such elaborate less-restrictive-alternative arguments could raise insuperable barriers to the exercise of virtually all search-and-

2. *Canvassing Motorists To Seek the Voluntary Assistance of Witnesses to Specific Crimes Serves a Public Interest Distinct from the General Interest in Crime Detection*

The Illinois Supreme Court invalidated petitioner's informational checkpoint because, in its view, it served only the government's general interest in crime control, which *Edmond* held was insufficient to support a suspicionless checkpoint stop. Pet. App. 7-8. That analysis is incorrect for at least two reasons.

First, *Edmond*'s prohibition on checkpoints that advance the "general interest in crime control," 531 U.S. at 40, did not prohibit all checkpoints designed to advance any type of criminal law enforcement interest. *Edmond* identified a Fourth Amendment prohibition on checkpoints that are designed to discover and punish criminal activity by the stopped motorists themselves. That is, *Edmond* addressed checkpoints, like the Indianapolis narcotics checkpoint, that are designed to elicit, through "interrogation and inspection," evidence "that any given motorist has committed some crime" unknown to the officers. *Id.* at 44. In describing the constitutional flaw in the narcotics checkpoint, the Court emphasized that the Fourth Amendment prohibits a program "under which authorities might simply stop cars as a matter of course to see if there just happens to be a felon leaving the jurisdiction." *Ibid.*; see also *id.* at 41 (narcotics checkpoint's "'proximate goal is to catch drug offenders'"); *id.* at 44 (narcotics

seizure powers' because judges engaged in *post hoc* evaluations of government conduct 'can almost always imagine some alternative means by which the objectives of the [government] might have been accomplished.'") (quoting *Martinez-Fuerte*, 428 U.S. at 556-557 n.12, and *United States* v. *Montoya de Hernandez*, 473 U.S. 531, 542 (1985)) (citation omitted).

checkpoint aimed at exploiting the "generalized and ever-present possibility" that examining any given group of motorists would reveal some type of criminal conduct); *Ferguson*, 532 U.S. at 81, 85 (finding *Edmond*'s "general interest in crime control" to be present when blood tests of hospital patients were undertaken "for the specific purpose of incriminating those patients") (emphasis omitted).[10]

Suspicionless seizures designed to gather evidence against the individual seized implicate the Fourth Amendment's historic guarantee of

> self-protection: the right to resist unauthorized entry which has as its design the securing of information to fortify the coercive power of the state *against the individual*, information which may be used to effect a further deprivation of life or liberty or property.

Frank v. *Maryland*, 359 U.S. 360, 365 (1959) (emphasis added). Such searches and seizures, however, stand in stark contrast to a brief stop of an individual that does not target him in the detection and investigation of crime. While such informational stops may seek to aid law enforcement, they do *not* do so by seeking evidence to be used against the person seized. See *Camara* v. *Municipal Court*, 387 U.S. 523, 537 (1967) ("[B]ecause the inspections are neither personal in nature nor aimed at the discovery of evidence of crime, they involve a

[10] *Edmond* also recognized that "there are circumstances that may justify a law enforcement checkpoint where the primary purpose would otherwise, but for some emergency, relate to ordinary crime control." 531 U.S. at 44. The examples noted by the Court (*i.e.*, a checkpoint to prevent "an imminent terrorist attack") also focus generally on apprehension of a criminal who is himself stopped at the checkpoint.

relatively limited invasion of the urban citizen's privacy.") (discussing *Frank*).[11]

Informational checkpoints differ from narcotics checkpoints in precisely that respect. As in this case, informational checkpoints are not designed to identify general wrongdoing by the persons stopped at the checkpoint and to collect evidence against them. Instead, they are designed to provide and obtain information relevant to public safety. Informational checkpoints, in other words, view motorists primarily as allies in solving a known crime, not as potential perpetrators of yet-to-be-discovered crimes. "[T]he Lombard police department did not seek to interrogate and inspect motorists to ferret out evidence that the motorists *themselves* had committed crime that was as yet unknown to police." Pet. App. 6 (emphasis added). "[T]he officers did not testify that they expected even to catch the offender [at the checkpoint]; they merely

[11] The specific holding of *Frank*—that health inspectors may enter and inspect a homeowner's premises *without a warrant*—was overruled in *Camara* v. *Municipal Court*, *supra*. *Camara* concluded that the distinction that *Frank* drew between the "historic interests of 'self protection'" furthered by the Fourth Amendment and interests in "personal privacy" did not justify allowing a warrantless intrusion into "the sanctity of [the] home." 387 U.S. at 530-531. *Camara* also noted that "inspections of the kind we are considering here do in fact jeopardize 'self-protection' interests of the homeowner," because fire, health, and housing codes are enforced by criminal sanctions. *Id.* at 531. *Camara*'s reasoning is thus consistent with the conclusion that a brief *seizure* (not a search) of an *automobile* (not a home) at a regularized checkpoint is less intrusive on Fourth Amendment interests when the purpose of the checkpoint is to distribute and seek information about a specific past crime by an unknown suspect, rather than to cast about for evidence of possible ongoing crimes comitted by the motorists themselves.

wanted to get a more accurate description of him." *Id.* at 26. The concern voiced in *Edmond* that a suspicionless stop might be routinely used by police to troll for criminal activity and to identify criminals traveling in their cars is thus not implicated here.

Second, and equally importantly, giving individuals the opportunity voluntarily to assist the police in the investigation of crime furthers an essential need in a free society, and the Fourth Amendment does not prohibit such interactions. "It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement." *Miranda* v. *Arizona*, 384 U.S. 436, 477-478 (1966); see also *Coolidge* v. *New Hampshire*, 403 U.S. 443, 488 (1971) ("[I]t is no part of the policy underlying the Fourth and Fourteenth Amendments to discourage citizens from aiding to the utmost of their ability in the apprehension of criminals."). The Fourth Amendment poses no barrier to police approaching pedestrians, bicyclists, or individuals on public transportation, offering them flyers, and asking questions. See, *e.g.*, *Drayton*, 536 U.S. at 200. Restricting an individual's movement to ask such questions would, of course, implicate the Fourth Amendment. But the questions themselves do not.

Accordingly, the fact that the officer at petitioner's checkpoint "search[ed] for evidence of a crime" (Pet. App. 26), in the attenuated sense that he alerted individuals (who happened to be in cars) to the fact of an investigation and offered information about the crime, does not make the checkpoint an ordinary crime-detection or crime-control measure. Furthermore, safety plainly requires that, for police to speak to a motorist, the motorist's car must be stationary. For that reason, the act of briefly stopping cars at the checkpoint was more analogous to a "routine, non-

criminal procedure[]," *Opperman*, 428 U.S. at 370 n.5, designed "to guard the police from danger," *Colorado* v. *Bertine*, 479 U.S. 367, 372 (1987), than to the general crime-control practice at issue in *Edmond*'s narcotics-detection checkpoint.[12]

The Illinois Appellate Court suggested, without explanation, that the presence of a second officer on a side street "tend[ed] to discredit the explanation that the police were merely seeking information." Pet. App. 27. Nothing in the record, however, substantiates the court's assertion of "police subterfuge," *ibid.* Rather, it is responsible police planning when conducting any checkpoint to have in place a mechanism for dealing with any motorists or pedestrians who, like respondent, pose an immediate threat to public safety. The preparation of the police to deal with such contingencies does not make ordinary crime control the "primary purpose" of the informational checkpoint. *Edmond*, 531 U.S. at 41.[13]

Nor is there a danger that upholding the checkpoint here will make such stops a ubiquitous intrusion on the

[12] In that regard, informational checkpoints resemble the types of "noncriminal" public-safety inspections, *Opperman*, 428 U.S. at 368, of carriages, ships, and other modes of transportation (including modern-day weigh stations) carried out by law enforcement since the founding of the Republic, see *Ross*, 456 U.S. at 805; *Frank*, 359 U.S. at 367-368.

[13] Had the Lombard police department knowingly allowed respondent to continue to drive, after exhibiting indicia of drunkenness and nearly running over a police officer, the department could have opened itself to liability for any injuries or deaths caused by respondent further down the road. See, *e.g.*, *Reed* v. *Gardner*, 986 F.2d 1122 (7th Cir.), cert. denied, 510 U.S. 947 (1993); *Drushella* v. *City of Elgin, Illinois*, No. 86 C 2307, 1987 WL 5902 (N.D. Ill. Jan. 26, 1987).

traveling public. Informational checkpoints are established in response to specific, known criminal incidents —they do not seek to uncover otherwise unknown criminal conduct by motorists, as did the narcotics-detection checkpoint in *Edmond*. Further, the character of the crimes susceptible to investigation through canvassing motorists, ordinary resource limitations, the case-sensitive judgments of experienced law-enforcement investigators, and "the good sense" and "political accountability" of law-enforcement officials, *Atwater* v. *City of Lago Vista*, 532 U.S. 318, 353 (2001), provide practical constraints on the frequency with which informational checkpoints are employed. See also *Sitz*, 496 U.S. at 453-454 ("[T]he decision as to which among reasonable alternative law enforcement techniques [to adopt] * * * remains with the governmental officials who have a unique understanding of, and a responsibility for, limited public resources, including a finite number of police officers.").

3. The Intrusion on Motorists' Liberty Is Minimal

The constitutionality of informational checkpoints under the Fourth Amendment turns on balancing the important objectives that are effectively served by such stops against the degree of intrusion on motorists.[14] In

[14] The petition does not challenge the Illinois Supreme Court's holding that the brief stop at the checkpoint constituted a seizure, see Pet. 4, 10, and this Court has stated that "[i]t is well established that a vehicle stop at a highway checkpoint effectuates a seizure within the meaning of the Fourth Amendment." *Edmond*, 531 U.S. at 40. See also Pet. App. 24 (Officer "Vasil stated that [respondent's] van had already been stopped pursuant to the roadblock before nearly striking him"). It may be, however, that some informational checkpoints may be so brief or otherwise unintrusive as not to rise to the level of a Fourth Amendment encounter. A traffic delay alone does not amount to a seizure

evaluating the level of intrusion for purposes of Fourth Amendment analysis, it is critical that automobiles, unlike homes or offices, are already subject to a "web of pervasive regulation." *New York* v. *Class*, 475 U.S. 106, 112 (1986).

> Automobiles * * * are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order.

Opperman, 428 U.S. at 368. See also *Wyoming* v. *Houghton*, 526 U.S. 295, 303-305 (1999) (passengers, as well as drivers, have a reduced expectation of privacy in cars traveling on the public thoroughfares); *Pennsylvania* v. *Labron*, 518 U.S. 938, 940 (1996) (per curiam) (noting "the individual's reduced expectation of privacy in an automobile, owing to its pervasive regulation"). The "automobile is subject to state regulation resulting in numerous instances of police-citizen contact," *Prouse*, 440 U.S. at 662, and the "practice of stopping automobiles briefly for questioning" at a checkpoint as part of that regulatory scheme "has a long history evidencing its utility" and "is accepted by motorists as incident to highway use," *Martinez-Fuerte*, 428 U.S. at 560-561 n.14. For those reasons, the Court has recognized, in other contexts, that the intrusion on motorists "stopped briefly" at a checkpoint "is slight." *Sitz*, 496 U.S. at 451.

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within the meaning of the Fourth Amendment. Traffic backups can be caused by a wide variety of governmental action, ranging from the normal operation of traffic lights at rush hour to investigating and clearing a roadway accident. *Maryland* v. *Wilson*, 519 U.S. 408, 420 (1997) (Stevens, J., dissenting) ("a traffic jam caused by construction or other state-imposed delay not directed at a particular individual" does not "constitute[] a seizure of that person"). And a brief request to converse at a checkpoint, incident to a slowing down of traffic, does not necessarily constitute a seizure, any more than a request by the token collector at a toll both as to whether a motorist had seen a particular car would constitute a seizure. In either case, the motorists may be free to leave without answering the authorities' questions. Cf. *Terry* v. *Ohio*, 392 U.S. 1, 16 (1968) (seizure requires that an officer both "accost[] an individual *and* restrain[] his freedom to walk away") (emphasis added).

The objective intrusion on liberty occasioned by the informational stop at issue here can only be characterized as negligible. Each stop lasted only 10 to 15 seconds. J.A. 31. That is shorter than any checkpoint previously upheld by this Court, see *Sitz*, 496 U.S. at 448 (25 second stop at sobriety checkpoint); *Martinez-Fuerte*, 428 U.S. at 547 (three to five minute stop at immigration checkpoint), and is significantly shorter than the time motorists routinely sit stopped at traffic lights or busy intersections. See Fed. Highway Admin., U.S. Dep't of Transp., *Traffic Control Devices Handbook* 4-100 (1983). The Lombard Police Department designs its checkpoints, moreover, to avoid "undue congestion" and to "maintain[] an orderly flow of traffic." Department of Police, Village of Lombard, *Operation of Departmental Vehicles*, Gen. Order No. 240-20, at 7 (Jan. 30, 1997). And unlike the checkpoints previously upheld by the Court, the informational checkpoint does not involve any demand for licenses or paperwork from the driver, any probing questioning, or any ticketing for minor, plain-view traffic infractions like seatbelt violations. J.A. 31. No search is undertaken at all.

See *Segura* v. *United States*, 468 U.S. 796, 806 (1984) (plurality opinion of Burger, C.J.) ("Different interests are implicated by a seizure than by a search," given the "generally less intrusive nature of a seizure.").

The subjective intrusion on law-abiding motorists (*Sitz*, 496 U.S. at 452) was also minor. When the officer approached the motorists, they learned that their individual actions were not under investigation in any way. The officer simply handed out a flyer and spoke briefly to the motorist about the accident. Nor did the checkpoint give officers discretion to handpick motorists for seizure, which might create apprehension. J.A. 24-25; cf. *Sitz*, 496 U.S. at 453. The presence of marked police cruisers and uniformed officers demonstrated the checkpoint's official character. Pet. App. 2; J.A. 34. Consequently, the "motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion." *Martinez-Fuerte*, 428 U.S. at 558 (quoting *United States* v. *Ortiz*, 422 U.S. 891, 895 (1975)). In short, the regularity of the checkpoint procedures provided "visible evidence, reassuring to law-abiding motorists, that the stops are duly authorized and believed to serve the public interest," *Martinez-Fuerte*, 428 U.S. at 559.

There was, therefore, "'nothing coercive [or] confrontational about the encounter,'" *Drayton*, 536 U.S. at 204, in this case. The informational checkpoint served only to facilitate the roadway counterpart to the long-accepted law enforcement technique of canvassing for witnesses and approaching them for voluntary questioning. That conduct is not a seizure at all when applied to pedestrians and individuals on public transportation. *Id.* at 200-204. While the need to halt motorists to communicate the same information to them does (at least in some circumstances) implicate the Fourth Amendment, the intrusion is a modest and justifiable one.

* * * * *

In sum, the brief, non-intrusive provision of important public-safety information that occurred here poses no real threat to motorists' liberty. Rather, the checkpoint in this case exemplifies the reasons for upholding informational checkpoints: they are a uniquely effective means of canvassing for witnesses to specific, known crimes, and they do not have the purpose of general crime control directed at the motorists themselves. The actions of the Lombard police department in establishing and operating the checkpoint in this case therefore did not violate respondent's Fourth Amendment rights.[15]

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[15] This case presents no question whether, even if the checkpoint itself had violated respondent's Fourth Amendment rights, the police would still have been justified in arresting him based on the intervening event of his erratic driving; and, if so, whether the fact that respondent's drunk driving was the cause of his arrest renders the exclusionary rule for any antecedent checkpoint violation inapplicable. Cf. *Segura*, 468 U.S. at 815 (suppression is inappropriate unless "the challenged evidence is in some sense the product of illegal governmental activity").

CONCLUSION

The judgment of the Illinois Supreme Court should be reversed.

Respectfully submitted.

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